Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-1461

STATE OF NEW MEXICO, EX REL. STATE HIGHWAY DEPARTMENT OF NEW MEXICO,

Plaintiff Respondent,

v.

RITA MOYA, ET AL., ALFONSO G. SANCHEZ AND CECILIA SANCHEZ,

Defendant-Respondents,

v.

HONORABLE ANTONIO CHAVEZ AND RICHARD V. GOSE,

Defendant-Petitioners.

RESPONSE TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

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RESPONSE TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

I. JURISDICTIONAL STATEMENT

The Petition for Certiorari (Page 1-3) fails to show the statutory provision believed to confer jurisdiction on the United States Supreme Court, contrary to Rule 23.1. (b) (iii) of the Supreme Court Rules. Reference is made (See Petition, Page 2) to 28 U.S.C. 1257(3), yet no State statute is cited as being repugnant to the Constitution of the United States, to sufficiently alert the Respondent or the Court to the issue. Furthermore, the Petition never clarifies exactly what statute is repugnant and for what reason(s), and fails to ever raise a federal question in this regard.

II. QUESTIONS PRESENTED

A. Eminent domain condemnation by the New Mexico Highway Department does not extinguish all right, title and realty interest of the prior owner to the subject real estate, if the condemnation was in excess of public needs. The prior owner of excess condemned property, according to New Mexico Law, Sec. 22-9-65, N.M.S.A. (1974 Supp.) (repealed 1975), retains a right to repurchase subject to said statute:

> ... the condemnor shall award the sale to the prior owner, his personal representative or heirs if such prior owner, his personal representative, or heirs pay the condemnor an amount equal to the highest bid....

Moreover, whether or not the prior owner's rights are extinguished, fails to present a federal question as there is no showing of a denial of due process or equal protection.

B. The Petition fails to specify what legislation granted what preferential right to whom to do what and what makes it unconstitutional. The fact that the New Mexico Supreme Court may have reversed prior New Mexico Supreme Court decisions (no citations are given in the Petition) does not raise a federal question.

Before the United States Supreme Court has jurisdiction to review a State Court decision, it must appear affirmatively from the record, not only that a federal question was presented for decision by the highest court of the State having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. Southwestern Bell Telephone Co. v. State of Oklahoma, et al, 303 U.S. 206, 58 S. Ct. 528, 82 L. Ed. 751.

C. Whether or not the New Mexico Supreme Court failed to follow the law of New Mexico with regard to the law of "special statutory proceedings," does not raise a federal question. There is no showing of such a failure in the Petition and the New Mexico Supreme court is free to interpret New Mexico legislation as it conforms to New Mexico law. No constitutional issues have been avoided, as there is adequate State authority for the decision of the New Mexico Supreme Court.

III. STATUTES INVOLVED

The Petition (Pages 8-10) fails to recite the most pertinent State statute which essentially resolves the controversy between the parties, to-wit, Sec. 70-1-3, N.M.S.A. (1953 Comp.) which reads as follows:

> Any person or persons, or body politic, holding, or who may hold, any right or title to real estate in this state, be it absolute or limited, in possession, remainder or reversion, may convey the same in the manner and subject to the restrictions prescribed in this chapter.

The above, coupled with Sec. 22-9-65, *supra.* are the principal statutes in this case, neither of which is repugnant to the United States Constitution. The application by the New Mexico Supreme Court of its local laws and the facts on which it founded its judgment are controlling on the United States Supreme Court. General

Trading Co. v. State Tax Commission of Iowa, 322 U.S. 335, 64 S. Ct. 1028, 88 L. Ed. 823.

IV. STATEMENT OF CASE

The Petition for Certiorari (at Pages 10-22) fails to ever state what the case is about or notify the Court of the Respondent where the constitutional error(s) occurred. Nor is it clear how the constitutional question(s) were ever presented to District Court or New Mexico Supreme Court for consideration. In fact, federal constitutional questions never were properly presented for review or otherwise considered by either court. The District Court ruled in favor of the Respondents on the following grounds (TR. 151-152):

Judge Frank Zinn speaking:

> "Gentlemen, I think the thing finally hinges on one question alone, which is that of the interpretation of the statute and whether or not the right of Mrs. Garcia to this option is assignable. I find from the record that—taking judicial notice of the things we have to, which is the judgment in 42900 relating to this tract, the judgment in this quiet title action, 48684, these are all the cases vesting in that lady the sole interest in the property, we come down to merely the one question, could she assign it?"
>
> "There's no question, she did assign whatever interest she had in the land. The question is whether it could be utilized under that statute to exercise this option of either repurchase at the condemnation price, or in the event of a public sale, to match the top bid. Mr. Olmstead's theory is that this is a personal right, not alienable, because the leggislature failed to add in addition to heirs and personal representatives, the word assigns."
>
> "I don't think this requires a particular construction of the statute, gentlemen. We have the general principal of law which recognizes the desirability of free alienation of real

property and other rights. You have the statute which today allows the assignment of future interests hereditary interests and things of that kind. This is an interest in land, it's an interest that arises out of the land and which she could assign, and it's the judgment of the Court that the assignment was proper, and that this is a right that was exercised in accordance with the steps required by the statute, that there was a timely offer and acceptance, that it is firm, and it is the judgment of the Court that the Highway Department in its declaratory judgment action is declared to have an obligation to convey to Alfonso G. Sanchez and Cecilia Sanchez this tract."

No federal constitutional question is raised by this ruling which was affirmed by the New Meixco Supreme Court. Where the decision of a State Court is on State grounds, sufficient in itself to sustain a judgment, the United States Supreme Court will not undertake to review it. Durley v. Mayo, 351, U.S. 277, 76 S. Ct. 806, 100 L. Ed. 1178.

V. THE PETITION IS FRIVOLOUS

The New Mexico Supreme Court didn't even bother to write an opinion when it affirmed the District Court judgment. The Appellants thereto had failed to raise any meritorious issues. And when the United States Supreme Court was petitioned for certiorari, the New Mexico Supreme Court denied Petitioner's Motion Respecting Stay of Mandate and Decision pending Application for Certiorari. No doubt, the Motion was denied because the New Mexico Supreme Court felt, as this Respondent feels, that the Petition is frivolous and without merit.

Rule 19, Supreme Court Rules, allows for review on writ of certiorari only where there are special and important reasons therefor. The rule also requests the Petitioner to show where a state court has decided a federal question of substance. The alleged error

of the New Meixco Supreme Court in reversing prior New Mexico law (see Petition, Page 26) is not a denial of equal protection of the law and does not raise any substantial federal question.

Petitioner seems to be arguing, although it is not too clear, that the New Mexico legislature should not allow the prior owner of excess condemned property a right to repurchase the property ahead of the high bidders on the property at a public auction. Sec. 22-9-65 *supra*. The New Mexico Supreme Court has ruled in the past that merely because a statute distinguishes between citizens or classes of citizens does not make it unconstitutional. Only if a statutory classification is so devoid of reason to support it, as to amount to a mere caprice, will it be stricken down. If any state of facts can be reasonably conceived which will sustain a classification, there is a presumption that such facts exist. Board of Trustees of Town of Las Vegas v. Montano, 82 N.M. 340, 481 P. 2d 702 (1971). Similar reasoning can be found in McGinnis v. Royster, 410 U.S. 263, 93 S. Ct. 1055, 35 L. Ed. 2d 282. The distinction between prior owners of excess condemned property and high bidders is real and legitimate and not illusory or capricious. Furthermore, Sec. 22-9-65 *supra*. is a rational means of establishing the repurchase price for the prior owner by way of the bidding process.

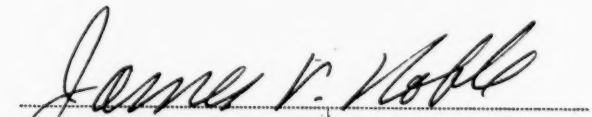
VI. THE PETITION IS UNCLEAR

Supreme Court Rule 23(4) requires the Petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration. The failure of the Petition for Certiorari in this regard needs no further discussion.

CONCLUSION

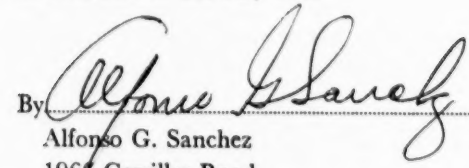
No federal question has been presented in the Petition for Certiorari herein. The same should be denied.

Respectfully submitted by:



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